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COMMITTEE ON SUBORDINATE LEGISLATION
(SIXTEENTH LOK SABHA)
(2016-2017)

SEVENTEENTH REPORT

[ACTION TAKEN REPORT OF THE COMMITTEE ON THE RECOMMENDATIONS /OBSERVATIONS CONTAINED IN SIXTH REPORT (2014-2015) (SIXTEENTH LOK SABHA)]

(PRESENTED ON 1.12.2016)

LOK SABHA SECRETARIAT

NEW DELHI

NOVEMBER, 2016/ AGRAHAYANA, 1938

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(16th LOK SABHA)
(2016-2017)

1. Shri Dilipkumar Mansukhlal Gandhi — Chairperson

Members

2. Shri Idris Ali
3. Shri Birendra Kumar Choudhary
4. Shri S. P. Muddahanumegowda
5. Shri Shyama Charan Gupta
6. Shri Jhina Hikaka
7. Shri Janardan Mishra
8. Shri Prem Das Rai
9. Shri Chandu Lal Sahu
10. Shri Alok Sanjar
11. Shri Ram Prasad Sarmah
12. Adv. Narendra Keshav Sawaikar
13. Shri V. Panneer Selvam
14. Shri Ram Kumar Sharma
15. Shri Nandi Yellaiah

SECRETARIAT

1. Shri Devender Singh - Additional Secretary
2. Shri Ajay Kumar Garg - Director
3. Shri Nabin Kumar Jha - Addl. Director

INTRODUCTION

I, the Chairman, Committee on Subordinate Legislation having been authorised by the Committee to submit the report on their behalf, present this Seventh Action Taken Report.

2. This Report relates to the action taken on the recommendations of the Committee contained in the Sixth Report (2014-2015) (Sixteenth Lok Sabha) which was presented to Lok Sabha on 12.8.2015.

3. The Committee considered and adopted this Report at their sitting held on 23.11.2016.

4. The summary of recommendations contained in the Sixth Report and action taken reply of the Government thereon have been reproduced in Appendix I of the Report.

5. The Minutes of the sitting of the Committee relevant to this report are brought out in Appendix II.

6. An analysis of the action taken by Government on the recommendations contained in the Sixth Report of the Committee (16th Lok Sabha) is given in Appendix III.

DILIPKUMAR MANSUKHLAL GANDHI,
CHAIRPERSON,
COMMITTEE ON SUBORDINATE LEGISLATION

New Delhi;
November, 2016 /Agrahayana,1937

REPORT

This Report of the Committee on Subordinate Legislation deals with the action taken by Government on the recommendations contained in their Sixth Report (Sixteenth Lok Sabha) which was presented to Lok Sabha on 12.8.2015. The Sixth Report dealt with the following Chapters: -

I. Infirmities in the Department of Posts Multi Tasking Staff Recruitment (Amendment) Rules, 2012 (GSR 512-E of 2012).

II. The Prevention of Money-laundering (Maintenance of Records) Amendment Rules, 2013 (GSR 576-E of 2013).

III. The Legal Metrology (Government Approved Test Centre) Rules, 2013 (GSR 593-E of 2013).

2. The shortcomings observed during scrutiny of the Rules/Order mentioned in Chapters (I) to (III) above were brought to the notice of the Ministries concerned for their comments/necessary corrective action. The Ministries concerned have accepted those shortcomings and have rectified the same. A statement showing the Action Taken by the Government on the recommendations contained in the Sixth Report is given in Appendix-I

DILIPKUMAR MANSUKHLAL GANDHI,
CHAIRPERSON,
COMMITTEE ON SUBORDINATE LEGISLATION

New Delhi;
November 2016 / Agrahayana ,1938

APPENDIX – I

(vide Para 4 of Introduction of the Report)

STATEMENT SHOWING THE ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS/OBSERVATIONS CONTAINED IN THE SIXTH REPORT OF THE COMMITTEE (16th LOK SABHA)

I. Infirmities in the Department of Posts Multi Tasking Staff Recruitment (Amendment) Rules, 2012 (GSR 512-E of 2012).

Recommendations of the Committee

1.1 The Committee observe that in Department of Posts Multi Tasking Staff Recruitment (Amendment) Rules, 2012 (GSR 512-E of 2012) notified by the Ministry of Communications & Information Technology (Department of Posts), footnote indicating the particulars of the Principal Rule and the subsequent amendments made thereto to facilitate easy referencing was not appended. The Committee observe that only when it was pointed out by the Committee, the Ministry took note of the observation made by the Committee for compliance and the Ministry vide its OM dated 06.03.2013 informed that necessary amendment to the Recruitment Rules of Department of Posts Multi Tasking Staff is being carried out in consultation with the Ministry of Law & Justice.

(Para 1.7 of the Report)

1.2 The Committee further note that the notification for amendment was published on 12 August 2013 in the Gazette of India by the Ministry i.e. after a delay of 6 months, since the Committee took cognizance of the matter and of 5 months after the Ministry gave its assurance that necessary amendment to the Recruitment Rules is being carried out. The reason advanced by the Ministry for such delay was, due to non-acceptance of the draft notification by the Mayapuri Press, New Delhi on the grounds that they accept only hard copy along with soft copy having Hindi version in 'Chanakya' or 'Kruti Dev' font. The Committee observe that the desired font i.e. 'Kruti Dev' is available free of cost on Internet. Moreover, as per the prescribed procedure followed by Government of India, all Gazette Notifications are published both in Hindi and English versions and also this was not the first notification to be notified by the Ministry of Communications & Information Technology (Department of Posts). The Committee, therefore, recommend that the Ministry of Communications & Information Technology (Department of Posts) should be more cautious henceforth while publishing amendment notifications so as to keep a check on such avoidable delays and should try to publish amendments in the Gazette of India within a period of two months after the Ministry has been apprised of the amendment.

(Para 1.8 of the Report)

Reply of the Ministry

1.3 The recommendations of the Committee on Subordinate Legislation are well taken and noted. All the concerned in the Department have been suitably instructed to be more careful and attentive in dealing with Recruitment Rules. Further, Hindi Branch of the Department is now equipped to translate the Recruitment Rules in Hindi as per the requirements of the Printing Press, Mayapuri.

[The Ministry of Communications & IT (Department of Posts)O.M. No. F.No.17-21/2015-SPB-I dated 26.10.2015]

II. The Prevention of Money-laundering (Maintenance of Records) Amendment Rules, 2013 (GSR 576-E of 2013).

Recommendation of the Committee

1.4 The Committee note that the expression 'reasonably practicable' used in the Prevention of Money-laundering (Maintenance of Records) (Amendment) Rules, 2013 is vague and is contrary to the oft-repeated recommendation of the Committee that use of vague expressions which are likely to be interpreted variedly should be avoided in the rules. The Ministry in their reply have stated that the expression was part of the recommendation of the Financial Action Task Force (FATF), which is mandatory for all countries and same wordings of recommendation were used in order to ensure that rules are not pronounced deficient in the FATF evaluation. However, the Committee observe that the Ministry in their reply itself have stated that they are in discussions with various regulators for setting up a time limit which justifies gravity and relevance of the issues raised by Committee. The Committee, therefore, take the view that in order to give effect to recommendation 10 of the FATF, the Ministry could have captured the essence of the recommendation of the FATF and could have done away with such vague expression in the rules. The Committee also take note of the fact that since the issue is related to money laundering and terrorist funding, therefore, it is directly linked to economy as well as internal security of the country. The Committee recommend that the Ministry of Finance (Department of Revenue) may make the rules precise and specific by setting a time limit for the reporting entity to complete the verification by replacing the vague expression viz. 'reasonably practicable' in the proviso added to Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005.

(Para 2.5 of the Report)

Reply of the Ministry

1.5 The matter has been consulted with Securities and Exchange Board of India (SEBI), Insurance Regulatory and Development Authority of India (IRDAI) and Reserve Bank of India (RBI). Following is submitted:-

(i) SEBI guidelines on Know Your Client and Anti-Money Laundering / Countering of Financing of Terrorism obligations do not permit registered intermediaries to establish client relationship without verifying the identity of the client and beneficial owners. Accordingly, intermediaries are required to collect all necessary documents to verify identity of the client and beneficial owner (s) before establishing the client relationship.

(ii) Considering the features of insurance business (as for the purpose of underwriting the risk an insurer has to undertake the verification before entering into Insurance Contract), insurer are required to undertake client identification at the time of commencement of relationship and they are not given the discretion of doing verification post establishment of the relationship as per the IRDA Master Circular on AML/CFT for Life Insurer (copy enclosed).

(iii) RBI has issued circular dated 17.7.2015 (copy enclosed) to align with amendment to Prevention of Money-Laundering (PML) Rules, thereby allwoing banks to complete the KYC verification in respect of low risk customer, within a period of six months of account opening.

[Ministry of Finance (Department of Revenue)O.M. No. 12011/1/2013-SO (ES Cell) dated 23.10.2015]

III. **The Legal Metrology (Government Approved Test Centre) Rules, 2013 (GSR 593-E of 2013).**

Recommendation of the Committee

1.6 The Committee note that the words 'willingness' and 'willing' used in rules 5 (3) (e) (f) respectively are vague and rule 5 (3) (h) lacks clarity in itself. The Committee observe that the use of vague expressions and the lack of clarity in the rules tend to erode the efficacy of the rules. The Committee strongly view that use of such expressions render the particular provision of the rules and, at times, the entire rules bafflingly intricate an instrument of exercising vagariously wide power by the executive authority. The Committee note that on being pointed out, the Ministry have agreed to amend the rules to do away with the vague expressions in the rules. The Committee, therefore, desire that the Ministry should bring out amendment to the rules so that vague expressions used in the rules, which may be interpreted

differently by different persons are avoided. The Committee, accordingly, recommend that the Ministry should re-phrase the terms which lack clarity.

(Para 3.5 of the Report)

Reply of the Ministry

1.7 The Government has amended the said provisions of Rule 5(3) (e)(f) & (h) of the Legal Metrology (Government Approved Test Centre) Rules, 2013 by an amendment vide GSR 94 (E) dated 20th January, 2016 as recommended by the Hon'ble Committee

Recommendation of the Committee

1.8 The Committee note that words 'shall be final' used in rule 5(8) of the aforesaid rules gives an impression that the jurisdiction of the courts of law is being ousted. The Committee take the view that expressions which tend to give an impression to general public that the jurisdiction of courts of law is being ousted should not form part of the rules. The Committee note with satisfaction that on being pointed out, the Ministry have agreed to amend the rules to the desired effect. The Committee recommend that Ministry may suitably amend the rules to exclude the expression which tend to reflect that jurisdiction of courts is being ousted.

(Para 3.7of the Report)

Reply of the Ministry

1.9 The Government has amended the said provisions of Rule 5(8) of the Legal Metrology (Government Approved Test Centre) Rules, 2013 by an amendment vide GSR 94 (E) dated 20th January, 2016 as recommended by the Hon'ble Committee.

[Ministry of Consumer Affairs, Food and Public Distribution
(Department of Consumer Affairs)
OM No. WM-11(16)/2014 dated 2 February, 2016]

APPENDIX-II

(vide Para 5 of Introduction of the Report)

MINUTES OF THE THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2016-2017)

The third sitting of the Committee (2016-17) was held on Wednesday, the 23rd November, 2016 from 1500 to 1535 hours in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

1. Shri Dilipkumar Mansukhlal Gandhi — Chairperson

MEMBERS

2. Shri S.P. Muddahanume Gowda
3.. Shri Janardan Mishra
4. Shri Alok Sanjar
5. Shri Ram Prasad Sarmah
6. Adv. Narendra Keshav Sawaikar
7. Shri Nandi Yellaiah

SECRETARIAT

1.	Shri Devender Singh	-	Additional Secretary
2.	Shri Ajay Kumar Garg	-	Director
3.	Shri Nabin Kumar Jha	-	Additional Director
4.	Smt. Jagriti Tewatia	-	Deputy Secretary

2. The sitting of the Committee was convened for considering and adopting draft Sixteenth Report on Rules/Regulations framed under various Acts of Parliament pertaining to the Ministry of Ayush (Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy) and draft Seventeenth Action Taken Report on the Recommendations/Observations contained in Sixth Report (2015-2016) (Sixteenth Lok Sabha).

3. At the outset, the Chairperson welcomed the members to the sitting of the Committee (2016-17). The Committee, then, considered the draft 'Sixteenth Report and Seventeenth Action Taken Report' and adopted the same without modifications. The Committee also authorized the Chairperson to present the same to the House.

The Committee then adjourned.

APPENDIX-III

(vide para 6 of Introduction of the Report)

ANALYSIS OF THE ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS CONTAINED IN THE SIXTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(SIXTEENTH LOK SABHA)

I.	Total No. of recommendations/observations made	5
II.	Recommendations that have been accepted by the Government [vide recommendations at Sl. Nos. 1.7,1.8, 2.5 3.5, 3.7]	5
III.	No. of recommendations which the Committee do not want to pursue in view of Government reply	Nil
IV.	Percentage of recommendations accepted	100%